
Sk. Fazluddin Vs Sm. Zubeida Khanam

Civil Revision Case No. 2669 of 1961

Court: Calcutta High Court

Date of Decision: Jan. 2, 1962

Acts Referred:

West Bengal Premises Tenancy Act, 1956 " Section 17, 17(1), 17(2), 17(3)

Citation: 66 CWN 849

Hon'ble Judges: P.N. Mookerjee, J; Laik, J

Bench: Division Bench

Advocate: Satyendra Prosad Sen, for the Appellant; Jitendra Kumar Sen Gupta and Asoke Kumar Sen Gupta, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule is directed against an order of the learned trial Judge, striking out the petitioner's written statement in the

pending suit for ejectment u/s 17(3) of the West Bengal Premises Tenancy Act, 1956. The instant suit was instituted on November 30, 1959. The

plaint alleged the usual service of the notice to quit and requisite defaults on the part of the defendant to disentitle him from the protection of the

relevant rent control legislation, to wit, the above Act of 1956. The suit was contested by the defendant who, in his written defence, denied, inter

alia, the plaintiff's allegation of default.

2. In the course of the suit, the plaintiff applied for an order u/s 17(3) of the above West Bengal Premises Tenancy Act, 1956. The application

appears to have been contested when it was first taken up for hearing. The defendant examined himself to deny the plaintiff's allegation of default.

Thereafter, however, due to the court's inability to take up the case for certain pre-occupations, the matter had to be adjourned from time to time

and, ultimately, when, on March 13, 1961, the case was called on for hearing, the defendant applied for time. The defendant's prayer was refused

by the learned trial Judge and, eventually, the matter u/s 17(3) appears to have been decided ex parte after the plaintiff had led evidence in support

of his case.

3. The learned trial Judge found, in his order, which is now under challenge, that the rent of the disputed premises at all material times and for the

relevant period was Rs. 300/- per month, as alleged by the plaintiff, and not Rs. 250/- per month, as claimed by the defendant. The learned trial

Judge further found that the defendant, on the above finding, had been a defaulter for several months and that he had also been a defaulter in

respect, particularly, of the month of January, 1960, for which rent was deposited at the rate of Rs. 250/- per month in court on February 15.

1960, although the summons of the suit, according to the learned trial Judge, had been served on the defendant on or about January 6, 1960.

4. Against the above order of the learned trial Judge, striking out the defendant-petitioner's defence against ejectment the present Rule was

obtained by the said defendant.

5. The first contention, which has been raised before us by Mr. Sen, in support of this Rule is that the learned trial Judge was in error in

overlooking the mandatory provision of section 17(2) of the West Bengal Premises Tenancy Act, 1956. Mr. Sen contends that there was, on the

face of the records and on the face of the impugned order of the learned trial Judge, a dispute between the parties as to the amount of rent,

payable for the disputed premises. Mr. Sen also points out that, on the relevant materials, there was also clearly a dispute as to the validity or

otherwise of the deposit, made by the defendant in court of the rent for January, 1960, on February 15, of the same year. He, accordingly,

contends that the learned trial Judge should have dealt with the matter u/s 17(2) of the above Act and passed proper orders thereon and, even if

the said order was against the defendant to the effect that he was a defaulter, the amount of arrears had to be found by the learned trial Judge and

reasonable time had to be given for deposit of the said amount in court and, only in default of such deposit, could his written statement be struck

out u/s 17(3).

6. Mr. Sen Gupta, appearing on behalf of the plaintiff opposite party, raised an initial objection to the above argument of Mr. Sen by pointing out

that the whole basis of the said argument was the old section 17(2) of the 1956 Act, but, to the instant case, and, at least, having regard to the fact

that the dispute as alleged by Mr. Sen, was continuing even with regard to the deposits, made after February, 1960, the relevant statutory

provision, applicable to the case would be not the old section 17(2) of the 1956 Act but the amended one, under which it was obligatory on the

defendant, if he wanted relief under that sub-section, to apply to the court, as prescribed therein.

7. In our opinion, the amended section 17(2) cannot apply to this case, in which not only the suit but also the application u/s 17(3) were made

prior to the coming into force of the above amendment. The amendment in question came into operation on February 29, 1960. There is nothing to

indicate in the statute itself or in any other relevant material that any retrospective operation was intended to be given to the said amendment. The

amendment would, then, be, prima facie and to all intents and purposes, prospective. If that be so, it can only affect suits or proceedings, instituted

or filed after the said amendment and suits or proceedings, which were pending at the date when the above amendment came into force, would

have to be decided under the earlier or unamended statutory provision. In the present case, as we have said above, both the suit and the instant

proceeding u/s 17(3) were pending at the date, when the above amendment came into operation. In such circumstances, we are bound to hold that

the present case must be governed by the old or unamended section 17(2) of the West Bengal Premises Tenancy Act, 1956.

8. Under the said section [Original unamended section 17(2)] it was obligatory upon the court, whenever there was a "dispute" to the amount of

rent, payable u/s 17(1) of the Act, to determine that dispute. That was the mandate of the statute, as expressed in the section itself, and to that has

been added the express authority and judicial mandate of several decisions of this Court, interpreting the said section [section 17(2)] as imposing a

duty upon the court to fix reasonable time for deposit of the amount, determined by the court as payable by the tenant u/s 17(1), under the

aforesaid sub-section (2) of section 17. In this view, we must hold that the order of the learned trial Judge is bad and cannot be supported. It is

incomplete and premature and, further, the basic findings of the learned trial Judge also appear to be too summary and need further consideration.

The matter, accordingly, will have to go back for further, fuller and proper investigation and for appropriate orders under the statute in terms of the

interpretation, which we have indicated above. To facilitate the enquiry, we may indicate the primary points of investigation which will arise,

namely, as to the rate of rent of the disputed premises, as to the amount of rent, payable by the defendant under sub-section (1) of section 17 and,

further, as specifically raised by Mr. Sen Gupta, the question of bona fides or mala fides of the various deposits, made by the petitioner defendant

with the Rent Controller, on which reliance has been placed on his behalf for getting rid of the plaintiff's allegation of default. These, of course, will

be the primary matters for enquiry in the proceeding, which is now to be taken up by the lower court, but there may be other or further matters, on

which decision may be necessary. It will be for the court below to decide the appropriate scope of the enquiry, which it will now make in

pursuance of the present order and in terms thereof.

9. In the above view, we make this Rule absolute, set aside the order, complained against in this Rule and direct that the case should go back to

the learned trial Judge for a proper decision of the plaintiff's application u/s 17 (3) of the above Act in the light of the observations, made

hereinbefore, and keeping, practically, in view the provision of the old or unamended section 17(2) of the above Act which, as we have sufficiently

indicated hereinbefore, would be the relevant provision, applicable to this case. It is only necessary to mention, in the facts and circumstances of

this case that it will be open to either party to apply to the learned trial Judge to adduce further or additional evidence for purposes of disposal of

the application u/s 17(3) and, if any such application is made, the learned trial Judge will consider it on the merits and deal with it in accordance

with law.

10. There will be no order as to costs in this Rule.

11. Let the records go down as quickly as possible and let the instant proceeding and also the connected suit be expedited as much as possible.

Laik, J.

I agree.